

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

Writ Petition No. 1424 (SS) of 2004

Ex. Army man Nayak Mohan Singh Rawat,
S/o Sri Budh Singh Rawat,
Delta Co. 12 Platoon / III Garhwal Rifles,
C/o 56 APO,
R/o village – Giwai Shot, Nai Basti,
Post Office – Kotdwar,
District – Pauri Garhwal.

... Petitioner.

Versus

1. Union of India through Secretary of Defence, New Delhi.
2. Commandant / N H Section / Record Officer, Garhwal Rifles, Lansdown.
3. Major Adjutant through Commandant Officer, III Garhwal Rifles, C/o 56 APO.

....Respondents.

Hon'ble M.M. Ghildiyal, J

Heard Sri C.K. Sharma, learned counsel for the petitioner and Smt. Anjali, learned standing counsel for Union of India on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

- i. a writ, order or direction in the nature of Mandamus directing the respondents to release the pension, gratuity, leave encashment and other dues of the petitioner within a specified period.*
- ii. Issue any other order or direction, which this Hon'ble Court may deem fit and proper in circumstances of the case.*
- iii. Award the cost throughout.*

Brief facts of the case are that petitioner was enrolled in Garhwal Rifles on 28.04.1977. After completion of basic military training, he was posted to 3 Garhwal Rifles with effect from 24.02.1978. The petitioner was appointed on the post of Lance Naik on 17.11.1983 and was further promoted to the post of Naik with effect from 21.01.1987, which was relinquished on 18.03.1989 for an offence committed by him under Section 39 (b) Army Act. However, vide order dated 19.03.1989 the petitioner was re-promoted to the rank of Naik and vide order dated 12.08.1991, petitioner was dismissed from service.

After dismissal, petitioner made several representations before the respondents for payment of pensionary benefits. Since the pensionary benefit was not provided to the petitioner, he was compelled to file the present writ petition.

Respondents have filed counter affidavit. The stand taken by the respondents in paragraph 6 of the counter affidavit is that petitioner is not fulfilling the primary condition of completing minimum 15 years of service in Army for admissibility of pension. As per Regulation 132 of Pension Regulation (Part I) 1961, the minimum qualifying colour service for earning a pension is 15 years in the case of Junior Commissioned Officer and other ranks. Secondly, in terms of Regulation 113 of Pension Regulation (Part I) 1961 an individual who is dismissed under the provisions of Army Act is ineligible for pension, hence, petitioner was not granted service pension. However, after dismissal from service, the petitioner had already been remitted the amount of admissible retiree dues, such as Armed Forces Provident Fund for

Rs. 45,336/-, Army Group Insurance Maturity Benefit for Rs. 18,422/- and final settlement of account for Rs. 2,640/-.

Since the petitioner has not served the Army for minimum of 15 years and further, he was dismissed from the Army, consequently, he is not entitled to get service pension as provided under Regulation 132 and 113 of Pension Regulation (Part I) 1961.

I do not find any force in the writ petition. Writ petition devoid of merit, as such, is dismissed. Stay application no. nil of 2004 is rejected accordingly. No order as to costs.

(M.M. Ghildiyal, J)

December 2, 2006
SKSharma